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MATTHEW GAYHART, et. al,	}	
	}	
Claimants,	}	
	}	
v.	}	**Claim No. 20061161**
	}	**Regular Docket**
STATE OF TENNESSEE,	}	
	}	
Defendant.	}	

DECISION

THIS CAUSE CAME ON to be heard before the undersigned sitting in Dandridge, Tennessee, on August 25, 2009, upon the Complaint filed by the Claimants, the Answer filed thereto by the Defendant State, stipulations entered into by the parties, the testimony of live witnesses, as well as opening and closing arguments presented by both parties, and the Record[1] as a whole.

The Claimants, Matthew A. Gayhart, Michael Gayhart, and their parents Edward A. Gayhart and Ann-Marie Gayhart were present and represented in this matter by J. Anthony Farmer, Esq., of the Knox County Bar. The State of Tennessee was represented by George H. Coffin, Jr., Esq., of the Office of the Attorney General of the State of Tennessee.

[1] References to the transcript of the hearing and the Exhibits introduced are to TR – and EXH – respectively. The parties agreed that several depositions would be introduced as proof in this matter. References to those depositions will be as follows: Amanda Snowden – A. SNOW DEP - ; Highway Patrol Officer Marty Nix – NIX DEP - ; Jeffrey Jones – JONES DEP - ; William Oros, M.D. – OROS DEP - ; and Jill Mortimore – MORT DEP -. The parties also agreed that medical records for both Michael and Matthew Gayhart could be introduced as substantive evidence. Those records are contained in Exhibits 7 and 8. Unfortunately, the pages of those records are not numbered sequentially. Therefore, references to those records are generally made.

This action is brought before the Commission pursuant to Tennessee Code Annotated, section 9-8-307(a)(1)(J) which provides:

> **9-8-307. Jurisdiction – Claims - Waiver of actions - Standard for tort liability – Damages – Immunities – Definitions - Transfer of claims.**
> (a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees, as defined in § 8-42-101(3), falling within one (1) or more of the following categories:
>
> . . .
>
> (J) Dangerous conditions on state maintained highways. The claimant under this subdivision (a)(1)(J) must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures . . . .

Based upon all the evidence, the Commission **ORDERS** Final Judgment for the Claimants be entered.

I. Facts

This case involves a serious automobile accident which occurred on May 7, 2005, in the southbound lanes of the Pellissippi Parkway (State Route 162) near where that road intersects with an entrance ramp leading to it from Lovell Road (State Route 131). Both Lovell Road and the Pellissippi Parkway are well-known thoroughfares in Knox County, Tennessee. The Pellissippi Parkway is a roadway leading to and from Oak Ridge, Tennessee, which shortly past the site of this accident, intersects with Interstate 40. The areas around both Lovell Road and the Pellissippi Parkway have experienced explosive growth since the Pellissippi Parkway was originally designed and built in the late 1960's and early 1970's.

The Claimants are proceeding against the State of Tennessee, Tennessee Department of Transportation ("TDOT"), pursuant to Tennessee Code Annotated, section 9-8-307(a)(1)(J). (TR 15.) The primary thrust of the claims in this matter is that a modification of the entrance ramp from Lovell Road to the Pellissippi Parkway, as originally constructed, was improperly designed

and constructed. In short, the Claimants allege that merger onto southbound Pellissippi Parkway occurs at an abrupt angle which causes drivers, such as Michael Gayhart, to overshoot the median near the merger area and thus, enter into the southbound lanes of Pellissippi Parkway. Secondarily, the Claimants allege that the State's modification design was faulty since, if a driver was able to negotiate the abrupt angle on the ramp, the succeeding merge lane into the Parkway was too short for the driver to gain sufficient speed to safely and smoothly enter traffic traveling between 60 and 70 miles per hour. The Claimants also allege the markings and signage on the defectively designed ramp were insufficient. (TR 16, 18.)

On the other hand, the State argues that Claimant Michael Gayhart was simply negligent in that he failed to obey a yield sign as he came up the entrance ramp and consequently, crossed over into the travel lanes of Pellissippi Parkway striking a vehicle operated by Jill Mortimore which was traveling south on that road. (TR 20-21.)

The Claimants have introduced a series of aerial photographs and drawings, through their expert witness, J. Allan Parham, PE, which are extremely useful in understanding the layout and dynamics of the accident scene. (See Exhibits 2-6.)

At the outset, it should be pointed out that the merge lane visible on Exhibit 2 from the Lovell Road ramp onto the Pellissippi Parkway was built after the original construction of the Parkway but on dates unidentifiable from TDOT records. Additionally, the parties stipulated that by 1998, a stop sign, which had previously been in place near the terminus of the Lovell Road ramp, had been replaced by a yield sign. (TR 13.) Apparently, previously cars entering the Pellissippi Parkway from Lovell Road were required to come to a stop before turning right onto the Parkway.

Testifying on behalf of the Claimants was J. Allan Parham, a registered engineer who has both undergraduate and graduate degrees in civil engineering from the University of Tennessee, with additional post-graduate work at Texas A&M. Mr. Parham testified that he had undertaken graduate studies in traffic engineering, roadway design, and highway safety. Further, Mr. Parham testified that he has taught in the areas of highway design and function and has testified in cases involving highway design, safety, and roadway operations. (TR 25-26.)

Mr. Parham stated that a highway interchange is defined as the crossing of two roads where speeds are maintained in order that more traffic can flow through an area. He said that this accident site was an interchange and that by design, interchanges involve ramps and seek to avoid causing traffic to stop. (TR 29-30.) Mr. Parham explained that there is a difference between roadway design and roadway operation. Roadway operation involves utilization of pavement markings and traffic control devices. (TR 31-32.) Additionally, the term "driver expectancy" is used in both traffic design and traffic operations. Driver expectancy considerations involve acquainting a driver with the roadway and possibly directing him/her through the facility. There are two elements to driver expectancy. The first is the concept of "priority" which means what the driver learns to expect. For example, a priority would be a comparison of big and smaller roads in a city. A secondary part of the concept of expectancy is the "ad hoc condition". An ad hoc condition is something out of the ordinary based on what a driver has already driven through. (TR 32.)

Mr. Parham also identified something known as the Manual on Uniform Traffic Control Devices ("MUTCD"). He testified this standard Manual is important because it standardizes and makes consistent various traffic markings and signals. The standard markings and signals set out

in the MUTCD warn drivers of upcoming events on a roadway and seek to direct a driver's attention to a situation. (TR 33-34.)

Mr. Parham testified regarding Exhibit 4. That Exhibit shows the ramp entrance as it exists now and as, in his opinion, it should have been configured. On the exemplary ramp, the radius of the curve merging into Pellissippi Parkway is smooth and consistent whereas the ramp, as it exists now, has a sharply curved radius as the driver prepares to merge onto Pellissippi Parkway followed then by a short merge lane. Having segments of a ramp with radii of different lengths is called a compound curve by engineers. The exemplar ramp shown on Exhibit 4 would permit a driver to attain a speed within five miles per hour of the traffic he/she is merging into under the American Association of State Highway Transportation Official's ("AASHTO") design manual known at the time the Pellissippi Parkway was built as "the green book" and now as "the blue book". (TR 37.) Mr. Parham testified that had the merge lane been as set out on the exemplar shown on Exhibit 4, the driver could pick up speed and enter the traffic stream. However, with the ramp as it is configured now, a driver would need to slow to approximately fourteen (14) miles an hour in order to get through the second curve and then begin to merge into the Pellissippi Parkway rather than being able to proceed at an appropriate speed from the ramp into the travel lanes of the Parkway. This failure violated the concept of driver expectancy. (TR 38.)

Mr. Parham went on to testify in detail as to the problems with the entrance ramp. First, drivers have an expectancy that they can sustain the same speed throughout the length of the ramp, but this is not true as the ramp enters Pellissippi Parkway. Specifically here, the driver expectancy of Michael Gayhart was that he could sustain the speed he had reached on the middle portion of the ramp as he approached Pellissippi Parkway but, in fact, he could not safely do that

because of the hard turn at the end of the ramp. Secondly, there were, at the time of the accident, no signs in place warning drivers a reduction in speed would soon be necessary as they approached the entrance to the Pellissippi Parkway. Third, at the time of the accident, there were no speed limits indicated on the ramp either in the form of signs or pavement markings. Fourth, there was no stark delineation of the traffic island separating the ramp from the Pellissippi Parkway. And finally, the one yield sign present was out of the line of sight of drivers on the ramp, and there were no supplemental yield signs present. (TR 38.) Mr. Parham testified that at the time of this accident, drivers on the ramp could have been traveling twenty-five (25) to thirty (30) miles per hour but given the radius of the curve of the ramp at the entrance to the Parkway, a speed of fourteen (14) miles per hour was the maximum that road could accommodate. (TR 39-40.) Consequently, drivers unfamiliar with this area could be traveling at a speed which would carry them into the southbound lanes of the Pellissippi Parkway. (TR 41.)

Parham explained the sharp angle to the right at the end of the ramp in geometric terms. According to his testimony, and referring to Exhibit 4, the radius of the ramp curve before reaching the hard right turn toward the end of the ramp is four times that of the curve toward the end of the ramp. On an interchange such as this, designers should keep variances in the radii of curves on a ramp to no more than twice the radius of the preceding portion of the ramp, or no less than one-half that radius. (TR 41-42.) Unless the radii of curves on a ramp are kept within those parameters, drivers will be forced to make a too great (or sudden) turn of the steering wheel. Ramps with such large variances violate rules of expectancy. When a driver travels on an earlier portion of the ramp, and the curvature of the ramp changes dramatically, his/her speed may then be too great coming into the portion of the ramp with a curve with a short radius, thus causing a possible loss of control of the vehicle. (TR 45, EXH 4.) The dramatic change in the

curvature of the ramp, caused by an inappropriate design and implementation of that design, was the cause of this accident. (TR 46.) Another problem here was the lack of warnings of the change coming toward the end of the ramp. (TR 46-47.) Prior to the modification of this ramp, there had been a stop sign at the intersection of the ramp and Pellissippi Parkway. That sign had been replaced with a yield sign but there is no record at TDOT of when this occurred, or for that matter, when the short merge lane had been constructed using the emergency lane of the Parkway.

The design manual promulgated by the American Association of State Highway Transportation Officials ("AASHTO") in 1940, or "the green book", and its later version, known as "the blue book", were in effect when the interchange was designed, modified, and at the time of the accident. The 1965 version of the AASHTO Manual was in effect when the stop sign was erected. (TR 48.) According to TDOT's Regional Engineer Amanda Snowden's testimony, the replacement of the stop sign with the yield sign did not occur since she has been traffic engineer. (TR 24.) At the time of this accident, the MUTCD had been adopted by TDOT. (TR 49.) Mr. Parham testified that the design of this interchange does not conform to either the MUTCD or the "green book" and the "blue book". (TR 49-50.) He testified that combining components of an intersection with aspects of an interchange, such as occurred here, will not work. (TR 51.)

Mr. Parham went on to testify that a large portion of the radius of the ramp was two hundred and thirty (230) feet but later, was reduced to only sixty-five (65) feet toward the end of the ramp. To be safe, he testified, the portion of the ramp with the sixty-five (65) foot radius should have had a radius of one-hundred sixty-five (165) feet. (TR 53-54, EXH 4.)

Exhibit 5, introduced by the Claimants, is an illustration of the ramp consistent with the blue and green book requirements and this design would have eliminated the problem here. The

radius of the curvature of the ramp in this drawing is two hundred seventeen (217) feet. (TR 54, EXH 5.)

Mr. Parham testified this entrance to Pellissippi Parkway was originally designed as an intersection, not as an interchange. An interchange should have been designed so that an entering driver could accelerate to a speed within five miles of the speed limit on the Parkway. Such a design affords both Pellissippi Parkway traffic and merging traffic with an opportunity to adjust to each other. (TR 55.)

The basic mistake is the design of the ramp but the second problem he identified was that the merge lane into the Parkway is too short. One way of correcting this would have been to lengthen the bridge on the Parkway which crosses back over Lovell Road. (TR 56.) The merge lane is, according to Parham, simply too short. (TR 56-57.) Mr. Parham testified categorically that the consulting design engineers made a mistake in the design of this interchange. (TR 57.) Additionally, using TDOT records, Mr. Parham was able to identify thirty-five (35) separate accidents at this site within three years of the instant accident. Of these thirty-five (35) accidents, ninety percent (90%) occurred when an entering vehicle, while traveling too fast, entered the southbound lanes of Pellissippi Parkway or when a driver entering the Parkway lost control resulting in a single vehicle accident. (TR 60, 65-66.)

Mr. Parham compared this interchange with that on the north-bound Pellissippi Parkway. There, he was able to identify only five accidents in the last five years and, he attributed this to the fact that that entrance onto Pellissippi Parkway did not give drivers the impression they were traveling on a ramp. (TR 67.)

Mr. Parham testified that TDOT would have had available to it at the time of this accident data regarding the number and nature of accidents occurring at various sites. (TR 68,

70.) He also testified that TDOT keeps crash site evaluation records on an ongoing basis. Additionally, it was his testimony that TDOT maintains a rating system, not open to the public, for intersections.

According to Exhibit 13, if the speed on the road being merged into is between sixty (60) and seventy (70) miles an hour, then a desirable speed for vehicles on a merging ramp would be between fifty (50) and sixty (60) miles per hour with a minimum of thirty (30) miles per hour. (EXH 13.) Mr. Parham testified that the radius of the sharp curve at the end of this ramp was too short to maintain the correct speed to effect a merger. (TR 72-73.) This ramp, at any point, can only accommodate speeds of twenty-five (25) to thirty (30) miles per hour and at the entrance into the Pellissippi Parkway, the radius is too short to maintain even the minimum speed necessary for a proper merger. (TR 73.)

Exhibit 13, Table VII-5, addresses compound curves or contiguous curves with different radii. The radius of the curve at the entrance to the Parkway is sixty-five (65) feet and is less than even the one hundred (100) foot minimum radius shown in this Table. (TR 74.)

With regard to the merger or acceleration lane on the Pellissippi Parkway, from a stopped position at the end of the ramp, in order to attain a speed of fifty (50) miles an hour, the merger lane would have to have been seven hundred and sixty (760) feet long. (TR 74.)

Mr. Parham testified, using Exhibit 13, as to how this roadway entrance would have appeared if it had been constructed consistent with the 1965 AASHTO standards in effect at the time the road was built. (TR 75, EXH 13.)

He also stated that the signage in place at the time of the accident, necessary to warn a driver of what he/she was about to encounter, did not comply with the MUTCD. The yield sign that was present was placed too late to tell the driver what to do. (TR 77.)

Mr. Parham testified that if an entrance ramp is properly designed, the driver picks up speed as he/she goes through the ramp. This ramp was poorly designed since it makes a driver slow down. (TR 82.) The speeds set out in the design manual for entrance ramps are calculated with the goal of helping traffic move through efficiently. Going through the ramp at thirty (30) miles per hour is the minimum for drivers merging into a roadway where speeds are between sixty (60) and seventy (70) miles an hour. Here, the ramp safely, at its terminus, accommodates speeds of only fourteen (14) miles per hour. (TR 82, EXH 13.)

On cross examination, Mr. Parham conceded that Section 2B, Part 09 of the 2003 MUTCD states that yield signs may be used where merger is occurring and the acceleration geometry and/or the site distances are not adequate for merging traffic. (TR 85, A. SNOW DEP EXH 9, Exhibit 2, thereto.) Mr. Parham testified that this is something which should have been addressed at this location. *Id.* (TR 85-86.)

Mr. Parham stated he visited the accident site on June 7, 2005, and observed skid marks leading across the "gore" area of the intersection. He saw no warning signs. He also found debris in the median of this roadway along with gouge marks resulting from this accident. Additionally, he observed a yield sign on the ramp to the far right. (TR 86-88.) He also noted that the radius of the ramp at its terminus was very tight. Mr. Parham testified that he believes the accident here took place in the passing or left-hand lane of southbound Pellissippi Parkway. (TR 89.)

Between 2002 and 2005, Mr. Parham testified there was on average one accident per month at this site under either wet or dry driving conditions. (TR 96, EXH 6.) He also testified that the yield sign did not alleviate the poor design of the interchange.

Mr. Parham went on to testify that the 1965 version of the AASHTO Manual was in effect in Tennessee when this road was initially designed. The 2001 version of the Manual was in effect when the accident occurred. Additionally, the 1961 version of the Manual was in effect in Tennessee when this interchange was first marked and the 2003 edition of those same regulations was in effect at the time of the accident. Mr. Parham testified that there were no changes in these manuals which would have made a difference in this case. (TR 99.)

In addition to the problems he had previously identified, Mr. Parham suggested that methods to have avoided this situation would have been to initially build the interchange further north from where it is now in order to create a longer merge lane or alternatively, to have designed the entrance to southbound Pellissippi Parkway in the same fashion as on the northbound lanes of this four-lane roadway. (TR 103.)

The Commission permitted, for attempted impeachment purposes only, the introduction of Exhibit 12, a September 27, 2007, Memorandum to TDOT Chief Engineer Paul Degges from Regional Director Fred Corum regarding problems at this particular interchange. The Claimants argued that this document, obviously created after the accident here, should be admitted to impeach the testimony of TDOT representative Amanda Snowden at her August 4, 2008, deposition that prior to January of 2008, when TDOT received a citizen's complaint about this particular site, she "wasn't aware there was a problem with safety [here]". (See EXH 12.)

Mr. Parham testified the problems identified by Regional Director Corum in his memo were the same as those developed during his investigation. (TR 116.) Director Corum, in that memorandum, identifies a need to reduce speed at the entrance as a problem resulting in tougher merges into the Pellissippi Parkway. Additionally, Mr. Corum commented on the shortness of the existing three hundred fifteen (315) foot acceleration or merge lane. (TR 117.) The same

memorandum also comments on fifty-three (53) automobile accidents occurring at this site between May of 2003, and February of 2007, as well as evidence at the site of damage to the roadway and debris in the area. Mr. Parham testified that the improvements suggested in Director Corum's memorandum were the same as proposed by him in Exhibit 5. (TR 118.)

Finally, Mr. Parham testified that if the radius of a portion of the ramp was expanded it should be no more than 1.75 times the existing ramp and, if the radius of the ramp is shortened, it should be no less than one-half the radius of the previous portion of the roadway. If not constructed within these parameters, the resulting turn becomes too abrupt. (TR 120.)

The proof also showed that the automobile in which Claimants Michael and Matthew Gayhart was injured was owned by Michael and his father, Ed Gayhart. (TR 122.) At the time of the accident, Michael was seventeen (17) years old, had been home-schooled, and had obtained a GED. (TR 125-126.) The evidence showed that Michael did not have a bad driving history and, in fact, his parents had implemented serious driving rules for both him and Matthew. Apparently, neither of the boys could be in a car in the absence of a licensed driver. Unfortunately, Michael testified that he remembered nothing about the actual accident. (TR 128.) Following the accident, Michael was extricated from the car by rescue personnel utilizing a device known as the "jaws of life". (TR 129.) He was first taken to Park West Hospital and then later transferred to the University of Tennessee Medical Center and diagnosed with a displaced fracture of his left thigh, multiple fractures of the pelvis, and a lacerated spleen. His most serious injury, the fracture of the left thigh, was treated through placement of a rod in his leg secured by two screws at either end. The screw closest to his kneecap later became painful and was surgically removed. (TR 130-131.) He remained in the University of Tennessee Hospital from Saturday until the following Thursday after which he returned to his parents'

home where for one to two months he slept in a hospital bed since otherwise, he could not make himself comfortable. Three weeks passed following his injury before Michael could walk with a walker. (TR 132-133.) He then spent three weeks ambulating with a walker, followed by graduation to use of crutches for a few weeks. Eventually, he was able to move about using railings. (TR 134.)

Michael testified that he has pain every day. That pain is generated following only ten minutes of sitting and with walking for more than one-half hour. Additionally, after thirty minutes of sitting, he finds it necessary to stand up. Changes in the weather also seem to cause pain as do calcium build-ups around his thigh fracture site. (TR 135, 147.) He testified that the pain continues until he shifts positions, and that he can not run, is slowed in walking, and suffers a tightening up of his leg with extremes in cold weather. He testified that at a previous job selling cars, his employer questioned why he could not run to prospective customers as was the practice at that particular dealership. He explained to his employer the problems he had with running. (TR 136.) He is currently working in the family janitorial business. (TR 141.) His other work experiences have involved selling automobiles for two years. (TR 142.) Michael also testified that he does not lift heavy items, and that he is guarded in his activities because he does not want to risk bending the orthopaedic rod in his thigh. (TR 137.) He does not use medications because they do not work for him. (TR 138.) He testified he prefers being in a chair to being on his feet. (TR 138.) The last time he saw Dr. Oros was in late 2008 or early 2009 when tests were run to determine how disabled he was. (TR 140.)

Following the accident, Michael was cited for failure to yield by the Tennessee Highway Patrol and consequently, he later attended a traffic school. (TR 144.)

This Claimant also testified that a troubling aspect of his injuries is being unable to engage in physical activities or contact sports. He testified that he can only run for one minute before experiencing pain. (TR 150.) As far as work impediments go, Michael testified that he has to do everything at a moderate pace and has to avoid heavy lifting. He said that he was out of the normal rhythm of life for three months. (TR 151.)

Ann-Marie Gayhart, Matthew and Michael's mother, testified that her son Michael was in significant pain in the hospital following surgery, and that for the first three weeks of his recuperation at home, all of his activities had to be monitored. (TR 154.) For the first two weeks he was home, he took Oxycodone and after that, he appeared to be in constant pain. (TR 156.) Michael also required help in getting to his walker from his bed and even while on crutches, had pain. The mother also testified that she still observes pain in her son when he is engaged in daily activities. (TR 159.)

Matthew Gayhart, a Claimant here, also testified. He was eighteen (18) years old at the time of the accident and was a passenger in his brother's car. He, unlike his brother, had been over this particular road before the date of the accident. He remembers nothing about what happened from the point the car was half-way up the ramp. (TR 164-166.) Matthew testified that both his knees hit the dash and that the right knee indented it by some six inches. He testified that he saw orthopaedic surgeons and underwent physical therapy for his left knee, which seems to be the worse than the right knee. As a result of the injury to that knee, he cannot bend it much. Matthew uses a knee brace since his knee gives way with him. (TR 167-168.) His left knee is bothersome if he twists it and also is affected by cold temperatures. Further, he stated that going up and down stairs is a problem, and that if he is active and does not use his knee brace, the next day he cannot walk. Matthew testified that these problems continue even

though four years have passed since the accident. (TR 168-169.) He testified that placing his leg in a particular position or "juking" in a sporting activity causes him problems. (TR 171.) As far as work is concerned, Matthew testified that his ability to kneel has been affected and that one to two times a week he does stretching exercises to loosen the left leg up. (TR 171.) The worst after-effect of the left knee injury occurs when his knee goes out when he does not use his brace. (TR 172.) He went on to testify that the vocational effects of this injury would be his inability to do things he had previously done such as roofing work. He did not believe he would be capable of working construction which would involve climbing up and down various structures. He testified every time he did something, he has to ice down his knee, and that he could not take over-the-counter medications because of the effect on his stomach. (TR 173-175.)

On cross examination, Matthew testified that he had seen doctors on two or three occasions since the accident, and that he was in the hospital until the following morning following the wreck. He told counsel for the State that he wears a knee brace pretty much all the time. (TR 177, 179.) He also testified he was knocked out as a result of the accident. It was his belief that the ramp was dangerous because of the sharp curve at the merge site and the additional fact that drivers had to speed up quickly in order to complete the merge. (TR 180, 182.)

Ed Gayhart, father of both Michael and Matthew, stated that he arrived quickly at the accident scene. Police and firemen were already there but emergency personnel arrived after him. (TR 186-187.) Mr. Gayhart testified that the vehicle his son was driving was a 1996 Ford Thunderbird with only 11,000 miles on the odometer. He stated that he would have taken no less than Eight Thousand Five Hundred Dollars ($8,500.00) for the vehicle and that the scrap value of the car was somewhere between Four Hundred and Six Hundred Dollars ($400.00 - $600.00).

(TR 188-189.) Mr. Gayhart testified that currently, Michael works for him part-time and Matthew full-time. (TR 192.)

The parties stipulated that Michael had incurred Forty-Two Thousand Six Hundred Thirty and 68/100 Dollars ($42,630.68) in medical expenses and that Matthew's medical bills totaled Seven Thousand One Hundred Eighty-Eight and 33/100 Dollars ($7,188.33).

The parties introduced the Deposition of Jill A. Mortimore who was operating the vehicle struck by the Gayhart vehicle at the time of the accident. Ms. Mortimore testified that the accident took place about 9:00 p.m., around dusk. (MORT DEP 34.) She was traveling from Oak Ridge to Knox County and testified that previously, she had seen accidents at this site and observed bumpers and broken glass in the roadway. (MORT DEP 35.) At the time of this accident, she testified that she was traveling in the left-hand passing lane of southbound Pellissippi Parkway. (MORT DEP 36.) She said that she observed a vehicle coming up the ramp from Lovell Road "going too fast". She went on to state that the driver of the vehicle she saw "stopped short of where the curve comes together" with Pellissippi Parkway, lost control, and came straight across the road, striking her vehicle. Both vehicles, Ms. Mortimore testified, had their headlights on. (MORT DEP 38.)

The parties also introduced the February 10, 2009, deposition of Tennessee Highway Patrolman Marty Nix. Trooper Nix testified he was aware that there were a lot of accidents at this site, and knew the Knox County Sheriff's Department had worked accidents involving fatalities there. (NIX DEP 7.) Trooper Nix identified the problem with the site as being the speed at which drivers come around the curve. He said that if a driver is not familiar with the site, he/she would think that the ramp continued straight ahead and that cars traveling on Pellissippi Parkway would consequently be right at the merging vehicles. He also testified that

the merge ramp is very short, and that drivers consequently are in the Parkway's flow of traffic before they know it. (NIX DEP 7-8.) Trooper Nix went on to say that Troopers discussed this site especially after two kids were killed when they ran up under a truck. He said that this site was "well-known to local law enforcement". (NIX DEP 9.) Trooper Nix testified that he cited Michael Gayhart for failure to yield since he had come straight out into traffic. (NIX DEP 11-12.)

The State's representative at trial was Amanda Snowden, Regional Traffic Engineer for the Tennessee Department of Transportation, Region I. This accident scene was located in Region I.

Ms. Snowden first testified in this matter in a deposition taken August 4, 2008. She is a civil engineering graduate of the University of Tennessee and has worked for TDOT since 1998. She has been Regional Traffic Engineer since February of 2006. (A. SNOW DEP 14.) Ms. Snowden testified that at the time of her deposition she was aware that a safety audit of the site was being undertaken by an engineering firm from Chattanooga, Tennessee. (A. SNOW DEP 18.) At that deposition, Ms. Snowden testified that she was not aware of any comments prior to 2008 regarding the safety of this accident site. (A. SNOW DEP 14.) It was her opinion, that for a reasonable driver, there were no safety concerns at the site now. (A. SNOW DEP 21.) She believed that although an increase in traffic had affected the area, signage and markings had taken care of any problems thus created. (A. SNOW DEP 22-23.) She could find no record at TDOT of when this ramp went from a stop sign directed entrance to Pellissippi Parkway to a merger using a merge lane and the yield sign. (A. SNOW DEP 24, 27.) However, she did testify that the acceleration lane is "too short for what is needed" and that she had serious doubts that the ramp met AASHTO standards. (A. SNOW DEP 32-33.) Further, Ms. Snowden testified that

it would have to be assumed that when this merge lane was built, TDOT knew it did not meet AASHTO standards. (A. SNOW DEP 34.) However, Ms. Snowden admitted that someone at TDOT would have to have approved building such a ramp not consistent with those standards. *Id.* It was her opinion that the speed of a vehicle coming out of the ramp curve would be low (maybe 20 mph). She also testified that the signs and markings on the ramp, prior to February of 2008, conformed to MUTCD standards. (TR 47-48.) Ms. Snowden also conceded that when the ramp was changed from a stop to yield configuration, the speed on the ramp would be a topic for consideration. (A. SNOW DEP 55.) It was further her testimony that if the ramp conformed to design standards, then a yield sign would not be present. (A. SNOW DEP 57.)

Ms. Snowden testified that the Tennessee Highway Patrol does not frequently inform TDOT of sites it considers to be problems. (A. SNOW DEP 65.)

At trial, Ms. Snowden was called by the State in order to address the Corum to Degges memorandum discussed previously. She testified her job as Regional Traffic Engineer involved twenty-four (24) counties. The position has no design functions and her responsibility is handling roads already in place and their general operation. (TR 201.)

Ms. Snowden testified that she had not seen the Corum memo (EXH 12) at the time of her deposition. However, following that deposition in August of 2008, Paul Beebe, Regional Design Engineer, told her about the memorandum. (TR 203.) She testified, in her opinion, Exhibit 12 was more of a design or cost document than one which would have been presented to her. (TR 204.)

Ms. Snowden testified she first became aware of problems with this site in January of 2008, after receipt of a citizen complaint. (TR 204.) Following that complaint, a request was made to something known as the marking office at TDOT. (TR 205.) She went on to state the

subject matter in the Corum/Degges memorandum is dealt with in TDOT's Design Department, but this information is available to other offices. She also said that everything she does in her job is addressed in this memorandum except for the cost estimates.

On cross examination, Ms. Snowden admitted that Exhibit 12 identified safety concerns within TDOT regarding design and function as of September of 2007, and that the site was in that same condition in May of 2005. Ms. Snowden testified that an operations engineer such as herself works with designers and makes determinations as to how signage and markings can improve a situation. (TR 214.) It was her belief that with a yield sign in place where the acceleration geometry of a merger lane is constrained, a driver should be able to negotiate the area of this roadway. (TR 213.) Although Ms. Snowden believed it was "odd", it was her testimony that no one had called in from District 15 in Region I and told TDOT that there had been thirty-five (35) accidents at this location in the three years prior to this wreck. (TR 216.) Ms. Snowden testified that the information on crashes at the site was in the hands of TDOT in 2005, but that at that time there was no safety audit protocol in place for ramps. A safety audit of this site was not done until 2008 after a citizen complaint. (TR 217.)

The State also introduced the testimony of civil engineer, Jeff Jones, Director of TDOT's Design Division for nine and one-half years. (JONES DEP 5.) Mr. Jones testified that the industry regulations used in Tennessee for design were the standards promulgated by AASHTO. (JONES DEP 7.) Mr. Jones characterized the Pellissippi Parkway as a principal arterial roadway or a freeway. (JONES DEP 14.) He went on to testify that the Pellissippi Parkway, or Highway 162, was designed in the late 1960's and was actually constructed in 1970. (JONES DEP 15.) The process involved using a consultant who prepared a design, a process closely monitored by TDOT. (JONES DEP 15.) Mr. Jones testified that following construction of a roadway, if a

question arises as to design safety, it is first addressed to a Regional Engineer. (JONES DEP 28.) Mr. Jones went on to testify that he saw nothing on a drawing of the intersection as it appears now which would violate AASHTO standards. (JONES DEP 30.) Additionally, it was his testimony that at the time of construction, TDOT's in-house engineers or consultants would have followed the MUTCD standards in effect in the 1960's and 1970's in setting up the original signage. (JONES DEP 32.)

Mr. Jones noted that from time-to-time a regional office will come back to the Design Department on an informal basis if a design is not operating well. (JONES DEP 36.)

Mr. Jones testified that because of tight funding, a project involving the re-design of a ramp area would have to be approved by TDOT's Chief Engineer. (JONES DEP 38.)

Mr. Jones stated that with a ramp such as this[2], it is important to make sure that the radius of the curvature of the ramp is appropriate for the speeds at which vehicles will travel through it. (JONES DEP 41.) Additionally, Mr. Jones said that the length of a ramp eventually depends on whether there is a signal stop control or yield sign and whether there is free flow movement from the ramp into the road which is being merged into. (JONES DEP 42.)

It was Mr. Jones opinion that in 1970, this was a stop controlled intersection because of the near right angle at which the ramp met the Pellissippi Parkway. (JONES DEP 43-44.) Additionally, he believed that this was a stop sign controlled merger since the radius of the ramp at the confluence with Highway 162 was very short. He further testified that a "yield control might be appropriate" but that it was probably a stop controlled site on the original design. (JONES DEP 44.) Mr. Jones testified that generally, the length of a merger ramp is fifty (50) feet to each one foot of width of the ramp. This was an approximation. (JONES DEP 47-48.)

[2] Mr. Jones testified with regard to a drawing which was not made an exhibit to his testimony. It appears that the drawings he had were from the period of the original construction of the Pellissippi Parkway. (JONES DEP 16.)

He noted that this merger lane was not consistent with that ratio. Consequently, that is why he believes, as originally constructed, there was a stop sign in place. (JONES DEP 48-49.) Mr. Jones would not characterize this as either a tapered or a parallel merger situation. *Id.*

Mr. Jones did state that he did not believe speed would be important on the ramp since the signs would be telling a driver what to do. (JONES DEP 52.) He said that the lower the design speed on a ramp, the more radical he would expect a turn to be. (JONES DEP 52.) Mr. Jones also testified that the lower the speed on a ramp, the longer the merge lane would have to be. (JONES DEP 53.)

The medical expenses incurred on behalf of Michael Gayhart, the most seriously injured of the two young men involved in this accident, totaled Forty-Two Thousand Six Hundred Thirty and 68/100 Dollars ($42,630.68). (EXH 7.)

Michael's primary treating physician was Dr. William Oros, M.D., an orthopaedic surgeon, practicing at the University of Tennessee Medical Center. Dr. Oros was deposed (EXH 11), and testified that Michael suffered a left femur fracture, a left sacral fracture, bi-lateral acetabular fractures, and a right inferior ramus fracture. (OROS DEP 5.) In layman's language, Dr. Oros diagnosed a broken leg and four fractures of the hip and pelvis. In all, Dr. Oros testified that he saw Michael ten times. (OROS DEP 14.) His treatment of Michael covered the period from May 8, 2005, through December 19, 2006. In October of 2005, Dr. Oros removed one of the screws from the rod placed in Michael's left leg. Dr. Oros testified that Michael may always have some discomfort depending on what he does daily. (OROS DEP 8.) The fractures to the pelvis were non-displaced. (OROS DEP 9.) Although Dr. Oros testified he would have to perform a separate examination in order to rate Michael under the AMA Guides to the Evaluation of Permanent Impairment, he estimated that Michael would have some two to five

percent (2-5%) permanent impairment. Dr. Oros said that he generally tells patients "if it doesn't hurt," they can engage in those activities which are comfortable for them. (OROS DEP 10 – 15.)

The parties also agreed that medical records from various sources, contained in Exhibits 7 and 8, could be considered by the Commission as substantive evidence. (TR 162)

With regard to Michael Gayhart, paramedics who responded to the accident stated that he had suffered "no loss of consciousness, but that he had an obvious fracture of his left femur". Interestingly, the notes from the University of Tennessee Medical Center, in the initial history and physical, indicated that Michael was positive for a loss of consciousness.

Michael was also followed by his primary care physicians at Trinity Medical Associates, P.C. and still, as of March 18, 2006, was taking Oxycodone and Acetaminophen oral tablets, 325 milligrams.

Medical records from Dr. Oros document that he performed surgery on Michael on May 8, 2005. On June 21, 2005, Dr. Oros noted that Michael had been walking for the last two weeks and that his knee was popping around one of the screws securing the rod to his leg. On July 28, 2005, Dr. Oros wrote that Michael was clinically and radiographically doing well. On September 20 and 21, 2005, Dr. Oros and his staff saw Michael. At that time, he was complaining of pain in the front of his left thigh. He had a negative Doppler study. On October 10, 2005, one of the screws was removed from the rod in Michael's left leg and on a return visit on October 20, 2005, Dr. Oros noted that the pressure around Michael's left knee was better and that he had a full range of motion without limitations. At that time, he was discharged from the clinic with no limitations. On December 19, 2005, Michael was once again in Dr. Oros' office and was diagnosed as having a bursa sac over the bone growth on the anterior (medial) aspect of his left thigh. He was seen again on January 26, 2006, by Dr. Oros, complaining of right flank

and left thigh pain and numbness caused by standing. Michael told the doctor that he was working eight hours daily and then working with his father for an additional number of hours. Michael believed that the pain on his right side was caused by walking abnormally. He told Dr. Oros that he had to squat to do anything and the doctor felt that Michael was "likely to have aches and pains for up to a year or so after his injury". However, the doctor believed that the situation would improve as he continued to get himself back into shape.

Matthew Gayhart incurred medical expenses of Seven Thousand One Hundred Eight-Eight and 33/100 Dollars ($7,188.33). His medical records indicate that he was seen between May 16, 2005, and September 27, 2007, by his primary physicians at Trinity Medical Associates. Additionally, Matthew consulted with an orthopaedic surgeon, Dr. Michael McCollum, at University Orthopaedics at the University of Tennessee Medical Center in Knoxville and Merrill White, M.D., at Tennessee Orthopaedics.

Dr. McCollum's office records indicate that on November 7, 2007, Matthew had a full range of motion of his left knee. The doctor noted mild crepitance and minimal tenderness. The left knee was stable to varus/valgus movement and the AC and PC ligaments were intact. The examination also revealed a negative McMurray's sign, no joint line tenderness, and further, that gross motor and sensory testing was intact distally. On November 7, 2007, Dr. McCollum diagnosed patello-femoral chondromalacia with possible internal derangement of the left knee. However, an MRI conducted on November 14, 2007, was negative. On November 31, 2007, Dr. McCollum diagnosed post-traumatic chondromalacia and prescribed a soft knee brace and over-the-counter anti-inflammatories with the admonition that Matthew should avoid repetitive kneeling and squatting.

Medical records from the University of Tennessee Medical Center state that Matthew told personnel there that he had not suffered a loss of consciousness in the wreck.

Matthew was also seen by Dr. Merrill White, M.D. another orthopedic surgeon in Knoxville on September 14, 2005. Dr. White felt that Matthew was gradually improving with no functional problems, and that he would need no physical therapy.

He was also seen by Trinity Medical Associates. On May 16, 2005, he reported to the physician's assistant who saw him that at the time of his accident, he and his brother were entering Pellissippi Parkway from Lovell Road when a vehicle traveling on the Parkway "blew a tire, soared right, and hit their car on the driver's side resulting in an accident". On that visit, Matthew reported no feelings of instability and the examiner noted no ligamentous laxity. When seen later that year on September 7, 2005, the examination of Matthew's left lower extremity was normal with the exception of "Some clicking with both lateral and McMurray's" but with a normal range of motion, no joint crepitation, and no pain on motion. Although Matthew was back at Trinity on September 14, 2005, there is no indication that he consulted personnel there regarding left knee problems. He was seen again for a different problem on January 10, 2006. There is no indication of complaints regarding his left knee. Again, Matthew was seen at these same offices on July 11, 2006, but there is no notation regarding any musculo-skeletal problems. The same is true for an office visit at the same facility on November 11, 2006. On September 27, 2007, Matthew did return to Trinity complaining of knee pain caused by working, running, and turning quickly. An examination by the physician revealed a full range of motion and no swelling with normal McMurray and Lachman's testing results. Varus and valgus positioning of the left lower extremity was also normal. Finally, Matthew was seen at Trinity Medical

Associates on April 3, 2008, for a nasal congestion problem. Again, there is no indication on this record of complaints regarding his left knee.

Mrs. Gayhart testified that as a result of his knee injury, Matthew uses a brace occasionally but frequently utilizes ice and over-the-counter medications.

Applicable Law.

This is a negligence case brought by the Claimants against the State of Tennessee based on alleged actions and omissions of TDOT. The Claimants base their claim on Tennessee Code Annotated, section 9-8-307(a)(1)(J)[3]. Under this Section of the Act, the State has "a duty to [the Claimants] to exercise reasonable care under all of the attendant circumstances to make [a] roadway safe". *Goodermote v. State*, 856 S.W.2d 715, 723 (Tenn. Ct. App. 1993).

Of course, in order to establish a case of negligence in any lawsuit, the Claimants must prove five (5) very distinct elements: (1) a duty of care owed by it to a claimant; (2) conduct falling below the applicable standard of care which amounts to a breach of that duty; (3) an injury or loss; (4) cause in fact; and (5) proximate, or legal cause. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *McClenahan v. Cooley*, 806 S.W.2d 767, 774 (Tenn. 1991); *Mason v. Metropolitan Govt. of Nashville and Davidson Co.*, 189 S.W.3d 217, 221 (Tenn. Ct. App. 2005).[4]

Since the Claimants are proceeding under Tennessee Code Annotated, section 9-8-307(a)(1)(J), they also specifically bear the burden of proving by a preponderance of the evidence that (1) it was reasonably foreseeable to the State that the allegedly dangerous condition at the intersection of Highways 131 and 162 could cause an injury; and (2) that state officials had notice of this condition within sufficient time to have afforded them an opportunity to remedy

[3] The Second Amended Complaint alleged jurisdiction under Tenn. Code Ann. §§ 9-8-307(a)(1)(C), (I), and (J). At trial, Claimants proceeded under subjection J.

[4] Both Tennessee and Federal courts have repeatedly stated that negligence is not presumed from the mere fact of an accident or injury. *Armes v. Hulett*, 843 S.W.2d 427, 432 (Tenn. Ct. App. 1992); cited in *Kellner, et. al. v. Budget Car and Truck Rental, Inc., et. al.*, 359 F.3d 399, 403 (6th Cir. 2004).

the problem. (See also *Hodge v. State*, No. M2004-00137-COA-R3-CV, 2006 WL 36905 *3 (Tenn. Ct. App.).)

The concept of foreseeability is at the core of any case involving allegations of negligence. Then Judge Koch, in the *Hodge* case just cited, provides a succinct statement of what foreseeability means. There, he wrote the following:

> Foreseeability is the test of negligence, ... because no person is expected to protect against harm from events that cannot be reasonably anticipated or that are so unlikely to occur that the risk, although recognizable, would commonly be disregarded. ... Thus, determining whether the State has exercised reasonable care under the circumstances depends on the foreseeability of the risk involved. ....
>
> A risk of injury is foreseeable if a reasonable person could foresee the probability that injury will occur. ... To recover in a negligence action, the plaintiff must show that the injury was a reasonably foreseeable probability, not just a remote possibility, and that the defendant could have taken some action to prevent the injury. ... Foreseeability does not require awareness of the precise manner in which an injury takes place, but rather a general awareness that injuries similar to those actually sustained could occur. ...
>
> The analysis does not end with determining that a risk of injury is sufficiently probable to give rise to a duty to exercise reasonable care to prevent the injury. (See *Belcher v. State*, 2003 WL 22794479 *6 (stating that it is not enough to prove the existence of a dangerous condition or that the State negligently constructed, improved, or maintained a highway).) Persons seeking to recover in negligence actions must also prove that the defendant's failure to exercise reasonable care was both the cause in fact and the legal cause of their injury or damage. ... They must also present sufficient evidence to establish that the State had appropriate notice of the dangerous condition in enough time to take appropriate protective measures. *Id.* at *3-4. (Certain citations omitted.)

Thus, cause in fact and legal cause are a part of this analysis.

Establishing cause in fact requires a showing that "but for" the defendant's breach of a duty owed the Claimant's, the damages would never have occurred. *Waste Management, Inc. of Tennessee v. South Central Bell Telephone Company*, 15 S.W.3d 425, 431 (Tenn. Ct. App. 1997), citing W. Page Keeton, Prosser and Keeton on The Law of Torts, section 41, at 266, ("[t]he defendant's conduct is a cause in fact of the event if the event would not have occurred but for that conduct".) See also *Ridings v. Ralph M. Parsons Company*, 914 S.W.2d 79, 83 (Tenn. 1996); *Snyder v. LTG Luftechniche Gmblt*, 955 S.W.2d 252, 256 at n. 6 (Tenn. 1997); *Kilpatrick v. Bryant*, 868 S.W.2d 594, 598 (Tenn. 1993).

Further, a three-prong test has evolved in Tennessee used in determining whether legal or formerly, proximate, cause has been established. That three-part test is as follows: (1) the tort-feasor's conduct must have been a 'substantial factor' in bringing about the harm being complained of; (2) there [must be] no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in the harm; and (3) the harm giving rise to the action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence. *McClenahan* at 775.

Another court explained legal or proximate cause in a quite understandable fashion: "It connotes a policy decision made by the judiciary to establish a boundary of legal liability, … and to deny liability for conduct that could otherwise be actionable. … These decisions are based on consideration of logic, common sense, policy, precedent, and other more or less inadequately expressed ideas of what justice demands or of what is administratively possible and convenient. … An actor's negligent conduct is the legal cause of harm to another if the conduct is a substantial factor in bringing about the harm and there is no rule of law relieving the actor from liability because of the manner in which the actor's negligence resulted in the harm." *Rains v.*

Bend of the River, et. al., 124 S.W.3d 580, 592 (Tenn. Ct. App. 2003). (Citations Omitted, Emphasis Supplied.)

Our appellate courts have gone on to further define how the Commission must go about determining whether a particular roadway is dangerous. The Supreme Court in *Sweeney v. State*, 768 S.W.2d 253 (Tenn. 1989) adopted language from a Louisiana case, *Holmes v. Christopher*, 453 So.2d 1022 (La. App. 1983), quoting *Besnard v. Department of Highways*, 381 So. 2d 1303 (La. App. 4th Cir. 1980), writ denied, 385 So. 2d 1199 (LA. 1980), as the standard in our state: "The decision of whether a condition of a highway actually is a dangerous and hazardous one to an ordinary and prudent driver is a factual one and the court should consider the **physical aspects of the roadway, the frequency of accidents at that place in the highway, and the testimony of expert witnesses in arriving at this factual determination.**" *Id.* at 255 (Emphasis Supplied); see also *Belcher v. State*, No. E2003-00642-COA-R3-CV, 2003 WL 22794479 *2 (Tenn. Ct. App.).[5]

Of course, all of the proof in support of this claim must be established by a preponderance of the evidence. That well-known term has been addressed many times by our appellate courts.

The term "preponderance of evidence" is in some respects difficult to firmly grasp. However, several cases may help clarify what proving a proposition by a preponderance of evidence means.

[5] It should be noted that frequently in cases involving roadways and their construction and maintenance, a discussion of State financial limitations may come up. With regard to that consideration, our courts have held that "under general tort law principles, the feasibility and costs associated with correcting [a] dangerous condition or taking other steps to avoid injury because of that condition would be factors relevant to a determination of duty not a bar to recovery by an injured plaintiff". *Allen v. State*, No. M2003-00905-COA-R3-CV, 2004 WL 1745357 *3 (Tenn. Ct. App.).

In *Teter v. Republic Parking System, Inc.*, 181 S.W.3d 230 (Tenn. 2005), our Supreme Court used the following language in connection with this concept:

> **"The standard of proof required in a case 'serves to allocate the risk of error and to instruct the fact finder as to the degree of confidence society expects for a particular decision.'** ... Generally, in civil cases, facts are proved by a mere preponderance of the evidence. ... The preponderance of the evidence standard requires that the truth of the facts asserted be more probable than not, ..." *Id.*, at 341 (Internal citations omitted; emphasis supplied.)

A preponderance of evidence can be established through either direct or circumstantial evidence. A well-established "train" of circumstances may even outweigh opposing direct testimony. (See *McConkey v. Continental Ins.*, 713 S.W.2d 901, 904 (Tenn. App. 1984), citing *Aetna Casualty and Surety Company v. Parton*, 609 S.W.2d 518, 520 (Tenn. App. 1980).)

In that same connection, the Court said in *Marshall and Jones v. Jackson Oil, Inc.*, 20 S.W.3d 678 (Tenn. Ct. App. 1999) that:

> "It is elemental that a party asserting a lawsuit claim must establish the claim by satisfactory proof convincing to the fact-finder. ... To carry the burden of proof, a party may employ either direct evidence from witnesses with personal knowledge or circumstantial evidence from persons who know and can testify to related facts that reasonably tend to establish the desired facts." *Id.* at 683.

The Committee on Pattern Jury Instructions (Civil) of the Tennessee Judicial Conference has promulgated T.P.I. – Civil (Charge Number 2.40) regarding the concept of preponderance of the evidence. Paragraphs 3 and 4 of that charge read as follows:

> "The term 'preponderance of evidence' means that amount of evidence that causes you to conclude that an allegation is probably true. To prove an allegation by a preponderance of the evidence, a party must convince you that the allegation is more likely true than not true.

> If the evidence on a particular issue is equally balanced, that evidence has not been proven by a preponderance of the evidence and the party having the burden of proving that issue has failed."[6] *Id.* at 65.

The Committee based this language on the Western Section Court of Appeals' decision in *Austin v. City of Memphis*, 684 S.W.2d 624, 634 (Tenn. App. 1984).

Decision

This case involves interesting issues regarding highway design and serious injuries to two young men, which could have been worse.

In this case, the Claimant Matthew A. Gayhart demands damages in the amount of Forty-Five Thousand Dollars ($45,000.00). His parents, Claimants Edward A. and Ann-Marie Gayhart, seek damages in the amount of Forty-Two Six Hundred Thirty Dollars and 68/100 ($42,630.68) for medical expenses incurred on behalf of their son Michael E. Gayhart, who was a minor on May 7, 2005. Claimant Michael Gayhart, who is now an adult, prays for damages in the amount of One Hundred Twenty-Five Thousand Dollars ($125,000.00). Finally, Edward A. Gayhart and Michael Gayhart also seek damages for the total loss of their 1996 Ford Thunderbird automobile.

The Claimants bring this action pursuant to Tennessee Code Annotated, section 9-8-307(a)(1)(J) alleging that a dangerous condition existed on May 7, 2005, on an entrance ramp leading from Lovell Road (Highway 131) onto the Pellissippi Parkway (Highway 162). Consequently, the Claimants allege this accident was foreseeable and that the State had ample notice of this situation with sufficient time to have remedied it.

[6] The Committee in the Use Note appended to this instruction set out the following as "other useful phrases": "The proposition is more probably more true than not true." [Ill. Pat. Inst., 2d ed., 1971] "The evidence that supports his claim on that issue must appeal to you as more nearly representing what took place than that opposed to his claim." [New York Pat. Inst. 1965] "The party must persuade you that his claim is more probably true than not true." [Pat. Inst. For Kansas, 1966]

On the other hand, the State alleges that this is a simple failure to yield case caused by Claimant Michael Gayhart's failure to observe signage in place and road markings at the terminus of the ramp.

Both the Pellissippi Parkway and Lovell Road are located in areas of Knox County, Tennessee, which have experienced rapid growth over the last thirty (30) to forty (40) years. The Pellissippi Parkway, which leads to and from Oak Ridge, Tennessee, and the entrance ramp onto it from Lovell Road were apparently planned in the late 1960's and actually constructed in 1970.

It would appear that as the areas surrounding these roads grew, traffic increased greatly and at some unknown date, TDOT altered the configuration of the ramp which drivers used to enter the Pellissippi Parkway from Lovell Road from a stop sign designated intersection to a sharp turn to the right, leading to a short merger lane, followed by movement into the right-hand lane of southbound Highway 162.[6]

The collision between the Gayhart vehicle and a car operated by Ms. Jill Mortimore which occurred on the Pellissippi Parkway was violent. In fact, Ms. Mortimore's car overturned. All parties involved in this violent collision were fortunate that their injuries were not worse and possibly, even fatal.

The proof is overwhelmingly clear that not only at the time the Pellissippi Parkway and the entrance ramp were originally built in 1970 and later when the entrance from Lovell Road was modified, but also on the date of this accident, the design and markings of these roadways should have been carried out by TDOT consistent with the provisions of the MUTCD and design concepts promulgated by AASHTO known in the design and construction business as either the "green book" or later, the "blue book". (JONES DEP 7, TR 49-50.) There is absolutely no dispute in the proof that this was the case. However, these design, signage, and marking

[6] Unfortunately, there is no record at TDOT of when this modification took place. (TR 24, 27.)

requirements, adopted by the State of Tennessee, also appear from the proof presented not to have been complied with at this interchange.

In layman's language, the following appears to have been the chief problem with the ramp entrance to the Pellissippi Parkway following its modification. As the testimony and exhibits show, there are actually two radii involved with this ramp. As the ramp commences, leading off Lovell Road, it continues with approximately the same radius until it almost intersects with the Pellissippi Parkway when suddenly there is an abrupt, or dog leg, turn to the right leading to a short merge lane onto the Parkway. In engineering language, this is known as a compound curve since it contains two curves with different radius lengths. The proof shows that a compound curve can foreseeably cause drivers coming up the ramp from Lovell Road to travel at speeds making it difficult for them to navigate safely through the hard right turn at the end of the ramp and then merge safely into the Pellissippi Parkway. In fact, what appears to have been occurring with regularity at this site prior to the subject accident was that drivers coming up the ramp would overshoot its terminus and end up driving into the southbound lanes of the Pellissippi Parkway. This dramatic change in the curvature of the ramp is the primary problem, according to the proof, at this accident site. (TR 46.) When there is such a variance in the radii of the adjacent or compound curves, the proof shows that the second curve should have a radius no greater than two times the preceding curve or no less than one-half the radius of the earlier curve. (TR 41-42.) Here, expert witness Alan Parham testified that the radius of the ramp leading into the final hard curve to the right was approximately four times greater than the sixty-five (65) foot radius of the curve of the ramp at the entrance to the Pellissippi Parkway. In fact, Parham pointed out an AASHTO table setting out the appropriate radii for compound curves.

The shortest radius shown on that chart was one hundred (100) feet, as compared with the existing sixty-five (65) foot radius of the second curve in this case. (TR 74, EXH 13, Table 7-5.)

What happens when a condition such as this exists is that drivers entering the final portion of the ramp are traveling at speeds which they cannot sustain in light of the acuity of the second curve at the end of the ramp. Therefore, using AASHTO standards, there is a direct correlation between the curvature of a ramp and the speeds at which it can be traversed. The State's witnesses agreed that a safe ramp speed, as dictated by the configuration of the ramp, is an important consideration in road design and construction. (A. SNOW DEP 55, JONES DEP 41.) In fact, TDOT Design Department chief Jones confirmed that the more radical a turn on a ramp, the lower the speed leading into that turn should be. (JONES DEP 52.)

Mr. Parham testified categorically that the design of this ramp does not conform with AASHTO standards. (TR 50.) He referenced Exhibit 13 and testified that under those guidelines, the speed on the ramp leading from Lovell Road should have been fifty to sixty (50-60) miles per hour and a minimum of thirty (30) miles an hour in order for a driver to safely merge into the Pellissippi Parkway. However, as the ramp existed at the time of the accident, the maximum speed on the ramp, at the hard turn to the right at its terminus, was fourteen (14) miles per hour if a driver was to safely navigate that portion of the road. (TR 72-73, 82, EX 13.)

Further, an appropriate merger from one road into another requires maintaining the speed of the merging driver at a rate sufficient for him or her to safely and smoothly segue into an adjacent roadway. Here, Mr. Parham testified, the expectancy of the driver, Claimant Michael Gayhart, was that he could continue at nearly the same speed he had traveled over the majority of the ramp and into the travel lanes of the Pellissippi Parkway where the vehicle speeds were between sixty and seventy (60-70) miles per hour. However, because of the harshness of the

angle at the end of the ramp, this "expectancy" was not possible, and he overshot the end of the ramp and ended up in the Pellissippi Parkway where he collided with the Mortimore vehicle. For a driver unfamiliar with the configuration of the ramp, Mr. Parham testified, his/her speed would carry him/her into the southbound lanes of the Pellissippi Parkway. (TR 41.)

This primary problem, according to Mr. Parham, was compounded by the additional fact that there was insufficient signage in place to warn Michael Gayhart that a significant reduction in speed would be necessary. Additionally, there were no speed limit signs on the earlier part of the ramp, and the traffic island at its terminus was not properly delineated. Finally, the one yield sign which was present near the end of the ramp was out of the line of vision of drivers. (TR 38.) Regional Engineer Amanda Snowden testified that it would have to be assumed that TDOT knew that this interchange did not conform to AASHTO standards, and that someone at TDOT would have approved the construction of a ramp out of compliance with those standards. (A. SNOW DEP, TR 34.)

Although the problems just identified are the primary considerations in the causation of this accident, there are other design problems at this site indicative of the mal-design of this interchange. Again, Ms. Snowden honestly testified that the acceleration, or merge lane, built parallel to the Pellissippi Parkway, is "too short for what is needed". (A. SNOW DEP 32.) She had doubts that this ramp as a whole met the AASHTO standards adopted by TDOT. (A. SNOW DEP 32-34.) Ms. Snowden also testified that had this entrance ramp been built in conformity with AASHTO standards, then a yield sign would not have been necessary under the MUTCD. (A. SNOW DEP 57.) In fact, the only yield sign in place was, according to Parham, out of the line of vision of drivers coming up the ramp.

The Claimants' proof also demonstrated that the merger lane was inappropriately short and that the bridge on the Pellissippi Parkway crossing back over Lovell Road would have to be widened in order to construct a longer merge lane compliant with AASHTO standards. (TR 56.)

Mr. Parham also confirmed that the existing signage was not in conformity with MUTCD standards and did not alleviate the poor design of the ramp. (TR 77.)

Of course, an important part of the Claimants' required proof in this case is a showing that the State had advance notice of the dangerous condition with sufficient time to have afforded it an opportunity, prior to the wreck, to remedy the problem. Here, Mr. Parham identified thirty-five (35) separate accidents at this site over the three year period preceding this wreck. He also testified that ninety percent (90%) of those accidents had been caused by vehicles coming up the ramp at excessive speeds. Mr. Parham's analysis, as set out in both his testimony and Exhibit 6, was derived from accident reports relating to this site which were available to and used by TDOT in its work. (TR 65-66.) Mr. Parham went on to testify that TDOT has a rating system, not open to the public, for intersections throughout the State of Tennessee. (TR 70.) Additionally, Parham testified that TDOT has available to it data regarding the number and nature of accidents on Tennessee roadways and, in fact, keeps ongoing records regarding crash data evaluations. (TR 68-70.) This information, according to Mr. Parham, would have provided notice of the dangerousness of this crash site well before May 7, 2005.[8] (TR 70.)

[8] Apparently, TDOT maintains a system known as the Tennessee Road Information Systems ("TRIMS"). "That department obtains copies of the accident reports that all investigating officers are required by statute to file with the Department of Safety. Information from those reports are (sic) fed into the computer and eventually result (sic) in the production of a statewide 'critical rate', and an actual rate for potentially high hazard locations. At the locations where the actual accident rate exceeds the critical rate, a formula that factors in personal injuries, fatalities and property damage and produces an 'economic loss difference' determines the ranking of that location." See *Sweeney v. State*, 768 S.W.2d 253, 256 (Tenn. 1989). This information is updated annually using the prior three years of accident reports. *Id.* at Fn. 2. The information is not publically available.

In fact, the Tennessee Highway Patrol officer who investigated this accident testified that this site was well-known to local law enforcement officers. (NIX DEP 9.)

In what can only be characterized as an understatement, Regional Engineer Snowden testified that it was "odd" that nobody had called in from TDOT District 15 and informed the Regional Office that there had been thirty-five (35) separate accidents at this site, nearly one a month, over the three years prior to this accident. (TR 216.) In fact, Ms. Snowden testified that while crash information data was in the possession of TDOT in 2005, at that time, the Department did not have a safety audit protocol in place for ramps. (TR 217.)

It was the testimony of the chief of TDOT's Design Department that post-construction, when a question arises as to design safety, the first person contacted is the regional engineer.[9]

The Commission has previously discussed case law developed in Tennessee for use in determining what constitutes a dangerous roadway in this state. See *Sweeny v. State, supra*.

Using that paradigm, the irrefragable and undeniable proof shows that the physical aspects of this roadway had resulted in nearly one accident per month at this interchange prior to this accident, generally involving vehicles coming into the southbound lanes of the Pellissippi Parkway from the Lovell Road ramp. The frequency of accident requirement set out in *Sweeney* is self-evident as illustrated by Claimants' Exhibit 6 and as that Exhibit was analyzed by Claimant's expert Mr. Parham. The Commission agrees with TDOT expert, regional engineer Snowden, that it was quite "odd" that the frequency of accidents at this site had not been reported

[9] The Claimants sought to impeach the testimony of Ms. Snowden through the introduction of a Memorandum from Region I Director Fred Corum to TODT's Chief Engineer Paul Degges dated September 27, 2007. Ms. Snowden's deposition was taken in this matter on August 4, 2008, and at that time, she testified she was unaware of any documents indicating problems at this site. Following that deposition, regional design director Paul Beebe brought Exhibit 12 to Ms. Snowden's attention. While the Commission will not consider that Exhibit for substantive purposes since it appears to be a part of a subsequent remedial measure undertaken by TDOT in 2007, the Commission also does not believe that Ms. Snowden was duplicitous in her claimed ignorance of this document at the time of her deposition. Her impeachment on this aspect of the proof is hardly necessary in light of the overwhelming evidence in this case that TDOT had information available to it showing that wrecks were constantly occurring at this site, sometimes with fatal consequences.

to the Region office given the fact that there was clear testimony that the State has in place a system whereby traffic accident reports, prepared by law enforcement officers throughout the state, are brought to the attention of TDOT and subsequently analyzed there. The Commission is consequently convinced that the State had ample notice that this was a high accident site.

Finally, using the *Sweeney* factors, expert witnesses for both the Claimants and the State opined and/or acknowledged that the design of this interchange does not comply with the AASHTO and MUTCD standards adopted by TDOT. Since those standards were promulgated with road safety as a primary goal, this interchange's non-compliance surely portended the result which generated the claims now before the Commission.

The evidence presented also establishes that the negligent design of this interchange was a substantial factor in causing this accident and that but for that negligence this wreck may not have occurred. Thus, as required by the *Belcher* decision, *supra*, the Claimants have proven, as they must, cause in fact and legal cause.

The proof, as discussed, also shows that the duty owed by the State to provide safe roadways, see *Goodermote v. State, supra.*, was breached by the State's actions and/or inactions here. The damages and losses likewise have been proven and will be discussed in detail shortly. Thus, all five elements of a classic negligence case have been established by the Claimants as well as the further requirements of the Tennessee Claims Commission Act, found in Tennessee Code Annotated, section 9-8-307(a)(1)(J).

Thus, the issues then become what are the extent of the Claimants' damages.

Damages.

Mr. and Mrs. Ed Gayhart.

At the time of this incident, Ed and Ann-Marie Gayhart were responsible for the medical care of their son, Michael, who was seventeen (17). Because the Commission has found the State at fault in this matter, the parents are entitled to recover medical expenses incurred on behalf of their son in the amount of Forty-Two Thousand Six Hundred Thirty and 68/100 Dollars ($42,630.68) and that amount is **ORDERED** paid to them.

Additionally, Ed Gayhart was the co-owner, along with his son, Michael, of a vintage 1996 Ford Thunderbird automobile with eleven thousand (11,000) miles shown on its odometer. Mr. Gayhart testified that he would have taken no less than Eight Thousand Five Hundred Dollars ($8,500.00) for this vehicle, assuming a willing seller and a willing buyer, neither under pressure to sell nor buy, and that the scrap value of this car, was Four to Six Hundred Dollars ($400.00-600.00). (TR 188-189.) Accordingly, the Commission will **ORDER** paid to Ed Gayhart and his son, Michael, the sum of Seven Thousand Nine Hundred Dollars ($7,900.00) for the loss of their vehicle.

Michael Gayhart.

Claimant Michael Gayhart's injuries were extensive and serious. He suffered a displaced fracture of the left thigh, which was treated surgically using an intramedullary rod attached with two screws. Because one of the screws later became uncomfortable, it was removed in a second procedure. (TR 130-131.) Additionally, Michael suffered four fractures of his pelvis and hip, as well as a lacerated spleen. He spent five days at the University of Tennessee Medical Center where his primary treating physician was orthopaedic surgeon William Oros, M.D. Dr. Oros was deposed on December 19, 2006, and his deposition is Exhibit 11 to this proceeding.

In his relatively brief deposition, Dr. Oros testified that a formal examination of Michael would be necessary before he could make an impairment rating. Apparently, at the time of his December 19, 2006, deposition he had not performed such an examination.[9] However, Dr. Oros opined that using the American Medical Association's Guide to the Evaluation of Permanent Impairment, Michael would have a permanent impairment rating of between two and five percent (2-5%) to the body as a whole. (OROS DEP 10.) Further, Dr. Oros testified that his advice to patients with injuries such as Michael's was to do what he could do comfortably.

Medical records[10] from Rural Metro state that Michael told them that he had suffered "no loss of consciousness", but that he had an obvious fracture of his left thigh. His father, Ed Gayhart, testified that immediately following the accident Michael called him using a cell phone, and told his father that he and his brother had been involved in an accident. (TR 187.) Medical notes from the University of Tennessee Emergency Department, however, document Michael as having been positive for a loss of consciousness. Michael testified that he remembers nothing about the accident. (TR 128.) In addition to Dr. Oros' office, Michael was treated by his primary care physicians at Trinity Medical Associates. Records from those offices show that as late as March 18, 2006, he was still taking Oxycodone-Acetaminophen.

Michael's mother testified that, not unexpectedly, while in the hospital her son experienced significant pain and that after he was released, for the first three weeks while at home, all of his activities had to be monitored. (TR 154.) She testified he was unable to sleep in a normal bed so the family obtained a hospital bed. For the first week and a half to two weeks at home, Michael was taking Oxycodone but experienced constant pain after that medication was

[9] Interestingly, Michael testified that his last visit with Dr. Oros was in late 2008 or 2009 in order to determine "how disabled [he] was". (TR 140, 148.)

[10] Both parties stipulated that the Commission could consider medical records on both injured brothers as evidence in this matter. Those records are contained in Exhibits 7 and 8. (TR 162.)

discontinued. He eventually began using a walker and ambulated with assistance. (TR 156-157.) Eventually, Michael graduated to using crutches but continued to experience a throbbing-type of pain. After three months, Michael was able to get around on his own. Currently, Ms. Gayhart still observes her son having pain in the course of daily activities. (TR 154-159.)

Michael testified regarding his disabilities. He stated that he was seriously incapacitated for some three months. (TR 151.) Currently, he has pain every day and this pain will emerge with ten minutes of sitting and one-half hour of walking. He is unable to run and estimated that he would develop pain if he ran for one minute. In fact, he says the worst after-effect of the accident and his injuries is an inability to engage in physical activity and contact sports. (TR 150.)

From a vocational perspective, Michael testified that his impediments involved having to carry out most activities at a moderate pace and avoid heavy lifting because of, in part, a fear he may bend the metal rod which is still in his left thigh. (TR 137, 151.) He also said that he is slow in doing most things. He recited a problem he had at a car dealership in Elizabethton where he had worked. Apparently, salesmen there were expected to run to a prospective customer sighted on the lot. However, Michael had to explain to his employer that because of his injuries, he was unable to do that. His preference now is to sit rather than being on his feet. (TR 138.) He finds medication to be ineffective. (TR 138.)

Michael presented no testimony regarding lost wages and Mr. Gayhart, his father, stated that he was working for the family janitorial business on a part-time basis.

Matthew Gayhart.

Matthew Gayhart was in the vehicle with his brother Michael sitting in the front right-hand passenger seat. Mr. and Mrs. Gayhart required both their sons to be accompanied by a

licensed driver at all times. The boys could not use cell phones or listen to the radio while driving. Matthew testified that he had previously traveled over the ramp involved in this accident. The testimony at trial was that he remembers the events of May 7, 2005, only to a point half-way up that ramp and that he was knocked out as a result of the collision. (TR 164-166.) However, medical records from the University of Tennessee Medical Center state that he had suffered no loss of consciousness. X-ray studies done at that same facility on the night of the accident did not detect any evidence of a fracture or dislocation of the left knee.

Subsequently, Matthew was also treated by Trinity Medical Associates. Notes from that facility indicate that on May 16, 2005, Matthew told a physician's assistant that the accident had occurred when a vehicle on the Pellissippi Parkway blew a tire, went airborne, striking the Gayhart vehicle. The Commission does not find this statement disturbing in light of the fact that Matthew Gayhart had been involved in an extremely violent and forceful automobile accident some eleven (11) days before and in all probability, at that point, the true dynamics of the wreck were not appreciated by anyone.

Matthew Gayhart's knees, according to his testimony, hit the dashboard of the vehicle during the accident. His primary problem since that time has been with the left knee. He testified that when he is overly active, he may have difficulty walking the next day. Further, he stated he uses a knee brace and that planting his knee and "juking' in sports activities, causes difficulties. Additionally, he complains that kneeling is a problem for him in connection with work. Matthew Gayhart testified that the problems he continues to have with his left knee would make it difficult for him to do roofing or construction work. (TR 171, 173-175.) Mr. Gayhart testified that he wears a knee brace almost continuously. (TR 179.) His mother, in her testimony, stated that her son uses a knee brace frequently. At another point in Matthew's

testimony, he said that he utilized a knee brace one to two times a week. (TR 169.) He also asserted that he frequently takes over-the-counter medications. The primary problem with his left knee is that it gives way. (TR 172-173.) On cross examination, Matthew testified that he had consulted with a physician some two to three times since the injury. (TR 177-179.) Additionally, Matthew's medical records indicate that he has been seen by two separate orthopaedic surgeons in connection with his knee injuries. In 2007, he was seen by Dr. McCollum who, after essentially negative physical and imaging studies, opined that he was suffering with post-traumatic chondromalacia[11]. Dr. McCollum prescribed a soft knee brace and advised Matthew to avoid repetitive kneeling and squatting.

Prior to that examination, Claimant Matthew Gayhart was seen on September 14, 2005, by orthopaedic surgeon Merrill White, M.D. who identified no functional problems and prescribed no physical therapy.

A review of Matthew's medical records from Trinity Medical Associates reveals no reports of knee pain on visits to that facility from September 7, 2005, until September 27, 2007, when he did voice knee complaints. However, medical personnel at that facility were unable to document abnormal findings.

Judgment.

The elements of damages in any personal injury case include lost wages, loss of future earnings, past and future medical expenses, past and future pain and suffering, and past and future loss of enjoyment of life. As previously discussed, as a minor at the time of this accident, Michael's parents were responsible for his medical expenses and those have previously been awarded to them.

[11] Chondromalacia is defined in Stedman's Medical Dictionary, 27th Edition (1999) as a "softening of ... cartilage".

The nature and extensiveness of Michael Gayhart's injuries dictate that an award be made to him for past and future pain and suffering, and past and future loss of enjoyment of life. He described in his testimony very believable pain symptoms and mobility problems caused by very minimal physical activity. The Commission is convinced that as he ages, these problems will increasingly continue to trouble him. While Ed Gayhart testified that his son was working part-time in the family janitorial business, there has been no proof introduced as to loss of past earnings and very little proof regarding the effects Michael's injuries will have on his future earning capacity. There is no proof regarding the cost of future medical expenses. Dr. Oros did opine a two to five percent (2-5%) permanent physical impairment, but it is not clear how this will affect Michael vocationally. Michael's position at trial was that he should be awarded One Hundred Twenty-Five Thousand Dollars ($125,000.00) in damages.

Michael Gayhart's injuries were substantial and included a displaced fracture of his left leg, four fractures to the hip and pelvis, and a lacerated spleen. The Commission is convinced that this young man endured the effects of significant injuries as a result of the poor configuration of the ramp dealt with in this action, and that in the future he will have physical problems which will not only cause him pain and affect his daily activities but also impact his ability to engage in certain kinds of work.

In light of the proof presented in support of Michael Gayhart's claim, the Commission **AWARDS** him One Hundred Ten Thousand Dollars ($110,000.00) in damages.

Finally, the Commission must address Matthew Gayhart's claim for damages in the amount of Forty-Five Thousand Dollars ($45,000.00). As an adult, he was responsible for payment of his own medical expenses and accordingly, he is **AWARDED** Seven Thousand One Hundred Eight-Eight and 33/100 Dollars ($7,188.33) for those expenses.

Frankly, the Commission is not as impressed with Matthew Gayhart's physical complaints as it was with those of his brother. The proof showed that two separate orthopaedic surgeons have identified no serious problem with Matthew's left knee. Additionally, the medical records from the family practice group he saw after September 7, 2005, and until September 27, 2007, reveal no complaints regarding an alleged knee problem[13]. Even on September 27, 2007, his primary care physicians were unable to diagnose any abnormal findings. Matthew Gayhart testified that his knee gives out with him, and that he does not believe he is capable of doing roofing or construction work. However, there is very little medical proof to substantiate these complaints and limitations. There is likewise no proof regarding the cost of future medical treatment.

Nevertheless, Matthew Gayhart does suffer from a chondromalacia condition with his left knee which he did not have before this accident.

In light of the evidence adduced in support of Matthew Gayhart's claims, the Commission **AWARDS** him Twenty-Nine Thousand Dollars ($29,000.00), which includes his medical expenses, for losses incurred as a result of this accident.

Therefore, it is the **ORDERED, ADJUDGED, AND DECREED** by the Commission that the respective Claimants be paid the sums set out above in light of the fact that the Claimants have met the proof requirements of Tennessee Code Annotated, section 9-8-307(a)(1)(J) upon which they have based their claims in this case.

[13] On May 16, 2005, Matthew was seen at Trinity Medical Associates regarding complaints with his knees following the accident. On September 7, 2005, although he was being seen primarily for "congestion, nasal drainage, and right ear hearing problems," he did report continued left knee pain since the May accident.

ENTERED this the 19th day of November, 2009.

William O. Shults, Commissioner
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CERTIFICATE

I certify that a true and exact copy of the foregoing Order has been forwarded to:

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This the 23 day of November, 2009. Marsha Rabsco